



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0417; FRL 9902-13-R08]

Approval and Promulgation of Air Quality Implementation Plans; Rescission of Federal Implementation Plan; Wyoming; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions and additions to the Wyoming State Implementation Plan (SIP) submitted by the Wyoming Department of Environmental Quality (WDEQ) to EPA on March 8, 2013. The SIP revision to the Wyoming Prevention of Significant Deterioration (PSD) program updates the program to regulate permitting of sources of greenhouse gases (GHGs). Specifically, we are approving revisions to Wyoming's Air Quality Standards and Regulations (WAQSR) Chapter 1, Common Provisions, Section 3, Definitions, and Chapter 6, Permitting Requirements, Section 4, Prevention of Significant Deterioration, and the addition of Chapter 1, Section 7, Greenhouse Gases. EPA is also rescinding the GHG PSD Federal Implementation Plan (FIP) for Wyoming that was put in place to ensure the availability of a permitting authority for GHG PSD permitting in Wyoming. EPA is taking this final action under section 110 and part C of the Clean Air Act (the Act or CAA).

DATES: This action is effective on [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No.EPA-R08-OAR-2013-0417. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, ostendorf.jody@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. Information is organized as follows:

Table of Contents

- I. Background for Our Final Action
- II. Response to Comments
- III. What Final Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

I. Background for Our Final Action

The background for today's final rule and EPA's national actions pertaining to PSD permitting of sources of GHGs are discussed in detail in our June 24, 2013 proposal (see 78 FR 37752). The comment period was open for thirty days, and one comment, from WDEQ, was received.

II. Response to Comments

Comment: The WDEQ supported our proposed approval of Wyoming's March 8, 2013 GHG PSD submittal and concurrent rescission of our FIP. However, WDEQ requested that we propose action on the State's May 11, 2011 SIP submittal (which generally concerned New Source Review regulations for non-attainment areas) in parallel or as close as possible to final approval of the March 8, 2013 GHG PSD submittal. WDEQ stated it was concerned about future inconsistency in the GHG PSD permitting regulations.

Response: EPA acknowledges WDEQ's support for our final approval. It does not appear that our final approval could result in some inconsistency in light of the fact that we are not, at the same time, proposing action on the May 11, 2011 submittal. EPA has already approved the portion of the May 11, 2011 submittal that revised the State's PSD program. See 76 FR 44265 (July 25, 2011). The remaining portion of the May 11, 2011 submittal adds two new sections to Wyoming's permitting rules. Section 13, entitled "Nonattainment permit requirements," incorporates by reference federal rules at 40 CFR 51.165. Section 14, entitled "Incorporation by reference," establishes the date of incorporation by reference of federal rules and provides information on how the public can inspect or obtain copies of the Code of Federal Regulations. We proposed to approve the May 11, 2011 addition of Section 14 in a separate action that will be completed concurrently with this one. In addition, the GHG revision to Section 4 independently provides a date of incorporation by reference and identical information to Section 14 about the

Code of Federal Regulations. With respect to Section 13, WDEQ did not identify any specific dependency between it and the March 8, 2013 GHG PSD submittal that would cause any future inconsistency in GHG permitting. In addition, the March 8, 2013 GHG PSD submittal did not include Section 13, so it appears to EPA that the two are independent.

III. What Final Action is EPA Taking?

We are approving portions of Wyoming's March 8, 2013 SIP submittal that update the PSD program to regulate permitting of sources of GHGs. Specifically, EPA is approving revisions to WAQSR Chapter 1, Common Provisions, Section 3, and Chapter 6, Permitting Requirements, Section 4, Prevention of Significant Deterioration, and the addition of Chapter 1, Common Provisions, Section 7, Greenhouse Gases. EPA has determined that these March 8, 2013 revisions are approvable because they were adopted and submitted in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. As explained in the June 24, 2013 proposal, we are not taking action at this time on the revision to Chapter 6, Permitting Requirements, Section 14, Incorporation by Reference.

In our June 24, 2013 action, we proposed to approve a portion of the SIP revision that deferred until July 21, 2014 application of the PSD permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources. This portion of the SIP revision was included to align Wyoming's state regulations with EPA's July 20, 2011 Biomass Deferral Rule. However, on July 12, 2013 the U.S. Court of Appeals for the D.C. Circuit vacated EPA's deferral rule for biogenic CO₂, stating that EPA is not authorized under the CAA to temporarily exempt such emissions from the PSD program. In light of the court's action, on July 31, 2013 Wyoming sent EPA a letter requesting that we not act on the deferral rule portion of their submittal.

As explained in our June, 24, 2013 proposal (see 78 FR 37752), as a result of today's action we are also rescinding the GHG PSD FIP for Wyoming at 40 CFR 52.37(b)(6). Therefore, as of the effective date of this final rule, the EPA will no longer be the PSD permitting authority for GHG-emitting sources in Wyoming.

In a July 31, 2013 letter to EPA, the State requested approval to exercise its authority to administer the PSD program with respect to those sources that have existing PSD permits issued by EPA, including authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Pursuant to the criteria in section 110(a)(2)(E)(i) of the CAA, we have determined that the State has the authority, personnel, and funding to implement the PSD program for existing EPA-issued permits and we are therefore transferring authority for such permits to the State concurrent with the effective date of EPA's approval of the State's PSD program into the SIP.¹ The two companies with EPA-issued permits that will be transferred to the State are Cheyenne Prairie and Sinclair. EPA has already provided a copy of each such permit to the State and notified the permit holders of the transfer.

EPA will retain PSD permit implementation authority for those specific sources within the State that have submitted PSD permit applications to EPA and for which EPA has issued a proposed PSD permit decision, but for which final agency action and/or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions) have not yet been concluded or completed upon the effective date of EPA's final SIP approval action. The State intends to assume full PSD responsibility for the administration and implementation of

¹ The details of our determination are provided in a memorandum in the docket.

such PSD permits upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application. We will act on their delegation request at that point.

IV. Statutory and Executive Order Reviews.

A. Executive Order 12866 – Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993); and is therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. because this SIP approval and FIP rescission under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply transfers the permitting authority from EPA to the State. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is

defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule will transfer the permitting responsibility of GHG emissions from EPA to the State of Wyoming. This final rule will lead to permitting requirements for certain sources of GHG emissions; however, these sources are large emitters of GHGs and tend to be large sources. Further, this rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and part C of the Clean Air Act do not create any new requirements but simply approve requirements that are already being imposed under federal and state regulations. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action transfers the permitting responsibility of GHG emissions from EPA to the State of Wyoming. Small governments are not impacted.

E. Executive Order 13132 - Federalism

This action does not have federalism implications. It will not have substantial direct effects on Wyoming, on the relationship between the national government and the State of Wyoming, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA specifies conditions under which states may request, and EPA may approve state implementation of CAA requirements. This rulemaking approves PSD permitting provisions in the State of Wyoming for GHG emissions, and as a consequence of the SIP approval, simultaneously rescinds federal PSD permitting responsibility for GHG emissions in Wyoming. This rulemaking is pursuant to the SIP approval and requirements of the CAA. As such, this final rule does not change the balance of power between Wyoming and EPA as provided for in the CAA. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed action from state and local officials. EPA received no comments from state or local governments on this rulemaking other than from the WDEQ.

F. Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to Wyoming's SIP, which does not apply in Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 – Protection of Children from Environmental Health Risks

and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because EPA is approving revisions to the Wyoming SIP for permitting of GHG emissions, as authorized by the CAA.

H. Executive Order 13211 – Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.I.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive

policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule approves the Wyoming SIP as meeting Federal requirements for GHG PSD permitting and transfers authority to the State for permitting GHG emissions subject to PSD requirements; it imposes no additional requirements beyond those imposed by Wyoming law.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Incorporation by reference.

Authority: 42 U.S.C. 7401 et seq

Dated: November 14, 2013

Gina McCarthy
Administrator
U.S. EPA

40 CFR part 52 is amended to read as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A – General Provisions**§ 52.37 [Amended]**

2. Section 52.37 is amended by removing and reserving paragraph (b)(6).

Subpart ZZ – Wyoming

3. Section 52.2620, the table in paragraph (c)(1) is amended by:

- a. Under Chapter 1, revise the entry for Section 3;
- b. Under Chapter 1, add the entry for Section 7; and
- c. Under Chapter 6, revise the entry for Section 4.

The addition and revisions read as follows:

§ 52.2620 Identification of plan.

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(c) * * *

(1) * * *

| State citation | Title/subject | State adopted and effective date | EPA approval date and citation ¹ | Explanations |
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| Chapter 1 | | | | |
| * | * | * | * | * |
| Section 3 | Definitions | 10/5/12, 2/14/13 | [insert Federal Register publication date], [insert | |

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| | | | Federal Register page number where document begins] | |
| * | * | * | * | * |
| Section 7 | Greenhouse gases | 10/5/12, 2/14/13 | [insert Federal Register publication date], [insert Federal Register page number where document begins] | |
| * | * | * | * | * |
| Chapter 6 | | | | |
| * | * | * | * | * |
| Section 4 | Prevention of significant deterioration | 10/5/12, 2/14/13 | [insert Federal Register publication date], [insert Federal Register page number where document begins] | |
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